

## **EXHIBIT J**

## MELKERSEN LAW GROUP, LLC

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November 3, 2020

### VIA E-MAIL

Suhana S. Han, Esquire  
Sullivan & Cromwell, LLP  
125 Broad Street  
New York, New York 10004-2498

Re: *Garcia et als. v. Volkswagen Group of America, Inc. et al.*  
ESI Search Terms and Custodians

Dear Suhana:

I write to follow up on my letter dated October 1, 2020, regarding proposed search terms and as also discussed in your letters dated September 28, 2020, and October 15, 2020.

First, let me address the proposed modifications to our proposed search strings set forth in your letter of October 15, 2020. We do not see any reason to use proximity operators rather than “AND” connectors to the search strings we proposed. We ask that VWGoA replace the w/10 operator with the “AND” connector for proposed search strings 11, 11.2, 11.3, 11.4, 11.5, 11.6, 11.7 and 11.8. We further request that VWGoA replace the w/20 operator with the “AND” connector in proposed search strings 12 and 13. For search string 13, we request that VWGoA replace the word “issue\*” with “issu\*” and replace the word “apply” with “appl\*”.

Second, I ask that you clarify a statement you made on page three of your letter dated October 15, 2020, in the third paragraph that appears on that page, where you stated, in pertinent part, “[I]n reviewing documents with search term hits, we will consider whether the document is responsive to any of Plaintiffs’ Requests for which VWGoA has agreed to provide documents – not just the particular Request(s) listed for each search string.” While we appreciate this statement to the extent that it expands the documents to be produced, I am concerned to the extent that it might suggest VWGoA is withholding documents, otherwise generated from an agreed-upon search string, based upon VWGoA’s unilateral determination of relevancy. Please confirm that is not the case. It is my recollection that the original draft of the protective order that your clients proposed included the ability to make relevancy determinations within documents generated from agreed-upon search terms. My recollection is that we disputed the inclusion of that provision, and it was removed from the final draft of the protective order that was ultimately entered. My understanding of the protective order is that if documents are generated in response to an agreed

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upon search string, except those for which a claim of an applicable privilege is expressly made (i.e. attorney-client privilege, work-product privilege, etc., identified on privilege log), all those documents must be produced. Please confirm that you share this same understanding.

Third, I write to address the specific search terms that we suggest for the remainder of our clients' RFPs issued to VWGoA, picking up where I left off in my letter of October 1, 2020. Given your statement quoted above from your October 15, 2020 letter, I will not attempt to identify specific search strings already addressed in my prior letter or otherwise herein in the context of any given RFP.

RFP#12: Legality of Selling Class Vehicles. We propose additional search strings to identify responsive documents to this RFP as follows:

Proposed Search String#14: ("Federal Safety Standards" or FSS or "Federal Motor Vehicle Safety Standards" or FMVSS) AND (591.5 or 591.7 or re-exported or destroyed or donated or retro\*)

Proposed Search String#15: (0-series or 0series or "0 series" or "zero series" or "zero-series or pre-series or preseries or "pre series" or preproduction or "pre production" or pre-production or "early production" or prototype) AND (591.5 or 591.7 or re-exported or destroyed or donated)

Proposed Search String#16: ("imported solely for the purpose of research, investigations, demonstrations or training, or competitive racing")

Proposed Search String#17: (modif\* /5 vehicle\* and Puebla)

Proposed Search String#18: (0-series or 0series or "0 series" or "zero series" or "zero-series or pre-series or preseries or "pre series" or preproduction or "pre production" or pre-production or "early production" or prototype or "series production") AND (retro\* or modif\*) AND (document\* or record\*)

Proposed Search String#19: (noncompliance or noncompliance or "out of compliance" or noncompliant or "not compliant" or "do not comply" or "does not comply" or illegal or improper or "cannot be certified" or "saleable with limitations" or "not saleable" or scrap or scrapped or scrapping) AND (retro\* or modif\*) AND (document\* or record\*)

RFP#14: Pre-Production Sales Report. We propose the following additional search string to identify responsive documents to this RFP:

Proposed Search String#20: (0-series or 0series or "0 series" or "zero series" or "zero-series or pre-series or preseries or "pre series" or preproduction or "pre production" or pre-production or "early production" or prototype or "series production") AND (audit or 17,000 or 17000 or 9,063 or 9063)

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RFP#16: Correspondence Regarding Der Spiegel. We propose the following additional search string to identify responsive documents to this RFP:

Proposed Search String#21: (0-series or 0series or “0 series” or “zero series” or “zero-series or pre-series or preseries or “pre series” or preproduction or “pre production” or pre-production or “early production” or prototype or “series production”) AND (“Der Spiegel” or <https://www.spiegel.de>\*)

RFP#17: Documents Reflecting Attempts to Identify Whistleblower. We assume that your client will be producing documents in response to this request that are easily segregable. Please confirm. Please also identify for us likely custodians of this type of information. We also propose the following additional search string to identify responsive documents to this RFP:

Proposed Search String#22: (mole or informant or whistleblower or rat or snitch\*) AND (“Der Spiegel” or <https://www.spiegel.de>\*)

RFP#21: Documents Referencing Carfax Price Calculator. Please identify for us likely custodians of this type of information. We propose the following search string to identify responsive documents to this RFP:

Proposed Search String#23: “price calculator” AND Carfax AND (profit\* or reven\* or sale\* or residual)

RFP#22: Buyback Letters or Settlement Offers. We assume that these documents are easily segregable. Please confirm. Please also confirm that your client has produced all such buyback offers or settlement documents, and if so, where we can find them in your production, and if not, when we can expect them.

RFP#24: Documents Reflecting Modifications to Named Plaintiffs’ Vehicles. We assume that these documents are easily segregable. Please confirm. Please also confirm that your client has produced all such documents, and if so, where we can find them in your production, and if not, when we can expect them.

RFP#25: Completed HS-7 Forms for Class Vehicles. Please update us on when we can expect this information.

RFP#26: Documents Reflecting Changes in Design, Build, Components. This RFP required your client to produce documents such as engineering change orders, engineering change requests or engineering change notices or similar documents evidencing changes to the design, build or component parts of the Series Production Vehicles from the Pre-Production Vehicles of the same make/model/year that form a portion of the Class Vehicles. We assume that these documents are easily segregable. Please confirm. Please

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also confirm that your client has produced all such documents, and if so, where we can find them in your production, and if not, when we can expect them.

RFP#27: Other Lawsuits. RFP#27 required VWGoA to identify other lawsuits from March 2019 to the present that makes similar claims to those made by our clients in the current lawsuit. VWGoA refused to provide this information. We ask that your client reconsider and provide us with a date certain by when this information will be provided.

RFP#31: Completed HS-7 Forms for Recalled Vehicles. Please update us on when we can expect this information.

RFP#32-34: Damage to the Class Vehicles. Your client's response to these RFPs indicated that it would provide documents regarding damage to the named Plaintiffs' Class vehicles. We assume that these documents are easily segregable. Please confirm. Please also confirm that your client has produced all such documents, and if so, where we can find them in your production, and if not, when we can expect them. As for documents reflecting damage to the remaining Class Vehicles, we assume these documents are easily segregable as well. It is my understanding that VWGoA typically files an insurance claim for any damages to these cars of more than a few hundred dollars. Please let us know if your client will produce documents reflecting damage(s) and any repair of such damages to these Class Vehicles and by when.

RFP#35: Class Vehicles' Condition Reports. We assume that these documents are easily segregable. Please confirm. Please also confirm that your client has produced all such documents, and if so, where we can find them in your production, and if not, when we can expect them.

RFP#37: Mileage Falsification Discussions. My recollection is that you all promised to identify the name and position of each person who signed the false odometer applications for Garcia and Jacobson. I do not recall you providing that to us yet. Please advise. Once we have this information, which will help us to ensure that proper custodian files are searched, we can discuss further potential search strings beyond the limited one proposed by your client to date.

RFP#41 & 46: Mileage Timing and Impact of Classification as New or Used. Please propose a search string that will identify documents responsive to this request. Please also let us know which custodians are likely to have responsive documents so it is clear where your client will be searching for such documents.

RFP#42: Organizational Chart Showing Individuals Involved in Mileage Falsification. Please identify the specific bates number of the organizational chart that you produced, if any, that reflects this requested information. If you have not produced this information to date, please let us know when it will be produced.

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RFP#43: Documents about Scrapping or Exporting Vehicles. Please propose a search string that will identify documents responsive to this request. Please also let us know which custodians are likely to have responsive documents to this RFP so it is clear where your client will be searching for such documents (we think this should include those custodians we already identified in my last letter, as well as John Ellefson, Atia Yarbrough, Alexandra Juenger, Kathrina Friedmann, Jessica Arvizu Mora). We propose the following additional search strings to attempt to identify some of the responsive documents to this RFP:

Proposed Search String#24: importer /3 code /3 922

Proposed Search String#25: BID\* /5 change\* AND (922 or 499 or 444 or CP8)

RFP#45: How Named Plaintiffs' Class Vehicles Were Used. We assume that these documents are easily segregable. Please confirm. Please also confirm that your client has produced all such documents, and if so, where we can find them in your production, and if not, when we can expect them.

RFP#48: Tim Glynn E-mail. Your client has failed to produce documents clearly responsive to this Request, including the document quoted in paragraph 99 of the Second Amended Complaint. We propose the following additional search string of all Tim Glynn's outgoing and incoming e-mail during the Relevant Time Period to identify responsive documents to this RFP:

Proposed Search String#26: (noncompliance or noncompliance or "out of compliance" or noncompliant or "not compliant" or "do not comply" or "does not comply" or illegal or improper or "cannot be certified" or "saleable with limitations" or "not saleable" or scrap or scrapped or scrapping or exported or re-exported or destroyed or donated or retro\*)

RFP#49: Chi-Han Chen E-mail. Your client has failed to produce documents clearly responsive to this Request, including the document quoted in paragraph 100 of the Second Amended Complaint. We propose the following additional search string of all Chi-Han Chen's outgoing and incoming e-mail during the Relevant Time Period to identify responsive documents to this RFP:

Proposed Search String#27: (0-series or 0series or "0 series" or "zero series" or "zero-series or pre-series or preseries or "pre series" or preproduction or "pre production" or pre-production or "early production" or CP8)

RFP#50-52: Documents Reflecting Meaning of PR Codes. We assume that these documents are easily segregable. Please confirm. Please also confirm that your client has produced all such documents, and if so, where we can find them in your production, and if not, when we can expect them.



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RFP#53 & 54: Documents Reflecting PR Codes S7Q, S99, SAO, SJO. We assume that these documents are easily segregable. Please confirm. Please also confirm that your client has produced all such documents, and if so, where we can find them in your production, and if not, when we can expect them. If you claim that these documents are not easily segregable, then we propose the following search string to identify responsive documents to this RFP:

Proposed Search String#28: S7Q or S99 or SAO or SJO

RFP#55: Documents Reflecting GPS Tracking. It is our understanding that all vehicles loaned out by VWGoA including those used as part of the Press Fleet, Leased Fleet and Pool Fleet, are tracked with GPS. This is relevant to our claims that inaccurate information was provided in the sale and titling history of the Class Vehicles, even though VWGoA maintained the accurate information. I recognize that it would be a significant amount of work to provide the tracking information for every Class Vehicle. We are agreeable to taking a look at this information for the named Plaintiffs' Class Vehicles first, and to then discuss with you further whether we can reach some sort of stipulation on the remaining vehicles without having to obtain the GPS data for each one. Please advise whether VWGoA will produce the GPS data for the named Plaintiffs' vehicles.

RFP#57: Documents Reflecting Advantage of Putting Vehicles in E-Tag Before Resale. Please propose a search string that will identify documents responsive to this request. Please also let us know which custodians are likely to have responsive documents to this RFP so it is clear where your client will be searching for such documents.

RFP#60: Policy on Sale of Pre-Production Cars for Resale to Public. We assume that these documents are easily segregable. Please confirm. Please also confirm that your client has produced all such documents, and if so, where we can find them in your production, and if not, when we can expect them.

RFP#61: Disciplinary Action Against Employees. Your clients refused to produce any documents that may be responsive to RFP#61. Please either amend your response to indicate that no such documents exist or produce the requested information.

RFP#63: Modifications Made to Vehicles Used in Auto Shows. We assume that these documents are easily segregable. Please confirm. Please also confirm that your client has produced all such documents, and if so, where we can find them in your production, and if not, when we can expect them.

RFP#64: Alterations Made to Vehicles Post-Manufacture. Please propose a search string that will identify documents responsive to this request. Please also let us know which custodians are likely to have responsive documents to this RFP so it is clear where your client will be searching for such documents. Given the recent recall that your client initiated relating to this issue, we propose the following search string to attempt to identify some of the responsive documents to this RFP:

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Proposed Search String#29: 20V-561 or 20V561 or 01E9

There should also be easily segregable documents produced in response to this request. Specifically, your client's recall indicates that from February 14, 2020 - June 20, 2020: Volkswagen Group of America Internal Audit Department performed an audit of internal use processes, following up on prior related audits focused on internal processes, to confirm that all vehicles produced or imported from January 2016 through December 2019 had been properly disposed or inspected, as warranted. That recall further indicates that on June 22, 2020: VWGoA Internal Audit completes analysis and internally publishes report; that on July 1, 2020: VWGoA Internal Audit report was presented to the Product Safety Committee of Volkswagen AG; that additional details were requested to get a better understanding of the production build status or internal usage; and that on September 9, 2020: Topic was presented to Product Safety Committee of Volkswagen AG, after which a decision was made to repurchase vehicles identified in the VWGoA Internal Audit report. All of the documents generated as a result of these activities, including the aforementioned audit report, correspondence between VWGoA and VWAG about it, minutes of the Product Safety Committee, and directives from VWAG to VWGoA as to how to proceed, are all within the scope of this RFP. I note that despite this pending RFP and related discovery, your client never notified us of this new recall, which appears to have been initiated as a direct result of our lawsuit. Please produce these documents without further delay.

RFP#65: Emissions Exempt Label Tracking Documents. Your clients refused to produce any documents that may be responsive to RFP#615. Please produce the requested information. This information is relevant to our claims because VINs to which emission exempt labels were assigned reflect vehicles that did not undergo the specific testing to allow certification for resale. This lack of emissions' certification/testing is indicative of early production vehicles that cannot be legally resold to consumers. It is my understanding that this information should be easily obtainable and is not voluminous. Please let me know if your client will comply.

RFP#73: One-Owner Car Designation and Impact on Sales' Price. We assume that these documents reflecting profitability of CPO cars, including one-owner status, are easily segregable. Please also confirm that your client has produced all such documents, and if so, where we can find them in your production, and if not, when we can expect them. If you believe these documents are not easily segregable, please propose a search string and custodians for this information.

RFP#74: Importance of Residual Value. We assume that documents reflecting importance of residual value, and how CPO sales can impact that measurement, are easily segregable. There should be presentations done at least annually, or perhaps even quarterly, by VWGoA that reflect such trends. Please also confirm that your client has produced all such documents, and if so, where we can find them in your production, and if not, when we can



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expect them. If you believe these documents are not easily segregable, please propose a search string and custodians for this information.

RFP#75: Benefits of CPO Cars over Other Cars. We assume that documents reflecting benefits of CPO cars over other types of vehicle sales are easily segregable. There should be presentations done at least annually, or perhaps even quarterly, by VWGoA that reflect such trends. Please confirm that your client has produced all such documents, and if so, where we can find them in your production, and if not, when we can expect them. If you believe these documents are not easily segregable, please propose a search string and custodians for this information.

RFP#76: Completed HS-7 Forms for Vehicles with Box#7 Checked. Please update us on when we can expect this information.

RFP#78: Discussions About Disclosure of Vehicle Use Before Sale. Please propose a search string and custodians for this information.

RFP#80: Correspondence with Carfax. We assume that documents reflecting correspondence with Carfax regarding the so-called Carfax Contract are easily segregable. Please confirm that your client has produced all such documents, and if so, where we can find them in your production, and if not, when we can expect them.

RFP#81: Prior Contract(s) with Carfax. We recognize you have produced the June 1, 2011, Carfax Contract as required by RFP 79. This RFP 81 requires production of any other contracts VWGoA maintained with Carfax during the Relevant Time Period besides the June 1, 2011, contract. We again assume that such documents are easily segregable. Please confirm that your client has produced all such documents, and if so, where we can find them in your production, and if not, when we can expect them.

RFP#84 & 85: Correspondence to and from Recalled Vehicle Owners. We assume that correspondence by VWGoA to owners of the Recalled Vehicles or from such owners to VWGoA is easily segregable. Please confirm that your client has produced all such documents, and if so, where we can find them in your production, and if not, when we can expect them.

RFP#86: Documents referencing ETKA. We propose additional search strings to identify responsive documents to this RFP as follows:

Proposed Search String#30: "caution: preproduction model"

Proposed Search String#31: "vehicle contains special equipment/fixtures that are not documented in the genuine parts catalogue."

RFP#87: As-Built Condition of Named Plaintiffs' Class Vehicles. We assume that as-built condition of the named Plaintiffs' Class Vehicles are easily segregable. If, however, the

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detail regarding vehicle build for the Plaintiffs' vehicles information cannot be determined or does not exist, please state as much in response to this request. It is my understanding that such data should be available in the typical case in the system that has replaced, or is intended to replace, the Daisy system, which I understand is known as COPS system (see VWGOA – Garcia-00024251). What we would like to be able to do is to identify differences in parts used in our clients' vehicles compared to the series production. Please let us know what information your client has regarding the build of our clients' vehicles and when you will produce it.

RFP#88: Risk of Crash, Fire & Injury in Recalled Vehicles. We propose additional search strings to identify responsive documents to this RFP as follows:

Proposed Search String#32: increase\* /3 risk AND (crash or fire or injury) AND (18V329 OR 18-V-329 OR 18V-329 OR 18-V329 OR 19V679 OR 19-V-679 OR 19V-679 OR 19-V679 OR 01C5 OR 01C6 OR 01D7 OR 01E9 OR 20V-561 OR 20V561)

We ask that you run this search not only on the custodians we have identified to date, but also on each member of the VWGoA internal audit department who worked on Recall 20V-561 as well as the prior recalls referenced in the proposed search string#32, as well as whichever individuals were communicating from VWGoA with the VWAG Product Safety Committee. Please identify each of these custodians to us as soon as possible.

RFP#89: Safety Impacts on Differences Between Pre-Production & Series Production. We propose additional search strings to identify responsive documents to this RFP as follows:

Proposed Search String#33: (0-series or 0series or "0 series" or "zero series" or "zero-series or pre-series or preseries or "pre series" or preproduction or "pre production" or pre-production or "early production" or prototype or "series production") AND (crash /3 rating or crash /3 worth\* or safety /3 impact\* or iihs or iihs.org or "Insurance Institute for Highway Safety")

We ask that you run this search not only on the custodians we have identified to date, but also on any other custodians who are likely to have documents responsive to this search string. I ask that you identify such custodians to us as soon as possible.

RFP#90-94: Documents Supporting VWGoA's Affirmative Defenses. We asked VWGoA to produce documents it claims supports its affirmative defenses. Your client responded by stating that it would not produce those documents until the time to identify its trial exhibits. That is not acceptable. Your client was required to have a good-faith factual basis to make these affirmative defenses, and we have a right to explore those during the discovery process. Please have your client produce any such documents, if any exist, without further delay.

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RFP#95: Complaints by Consumers that VWGoA Falsified Mileage or Odometer. We are aware that VWGoA maintains detailed reports of calls that it receives from consumers daily describing complaints about its vehicles. We would like the databases where such documents are stored to be searched for documents responsive to RFP 95. Please identify that database and its location to us as soon as possible. We propose additional search strings to identify responsive documents to this RFP as follows:

Proposed Search String#34: (fals\* or inaccurate or mislead\*) /20 (mile\* or odometer or title /5 application or use /5 history)

RFP#99: Daily Data File Feed Referenced in Carfax Contract. Please identify the individuals responsible for setting up, managing and monitoring the so-called “daily data file feed” referenced in the Carfax Contract and described in paragraph 74 of the Second Amended Complaint. We believe that each of these individuals are appropriate custodians for which searches relating to this RFP 99 should be conducted. We propose additional search strings to identify responsive documents to this RFP as follows:

Proposed Search String#35: (file /4 feed) AND Carfax

RFP#100: Tax Returns. VWGoA’s tax returns are clearly relevant to this action, given the claim for punitive damages. VWGoA attempted to make this same objection in the diesel litigation and forced me to bring a motion to compel, which was granted. Production of such tax filings is routinely required in cases seeking punitive damages. Please produce this information without further delay.

RFP#101 & 102: Money paid to R.L. Polk & Company and Carfax, Inc. Producing this information is as easy as hitting a few buttons in VWGoA’s accounting system to print out a vendor payment history for each year for each of these two companies for the relevant time period. The information is relevant because we claim that your client represented itself and Carfax to be independent all the while maintaining a close financial partnership with these entities with intertwined business interests. Please produce this information without further delay.

RFP#103: Risk Sharing Agreement. We assume that the Risk Sharing Agreement referenced in paragraph 20 of the Second Amended Complaint is easily segregable. Please confirm that your client has produced such Risk Sharing Agreement, and if so, where we can find it in your production, and if not, when we can expect it.

RFP#104: Training Videos and Sale Training Materials. We assume that the sales training materials that VWGoA used to train its dealers and/or their salespeople about how to market and sell CPO cars is easily segregable. Please confirm that your client has produced these training materials, and if so, where we can find them in your production, and if not, when we can expect such materials.

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RFP#105: Certified Preowned Training Manual. Please confirm that your client has produced its so-called Certified Preowned Training Manual, including all amendments thereto, for the Relevant Time Period, and if so, where we can find them in your production, and if not, when we can expect such materials.

RFP#106: Certified Preowned Marketing Materials. Please confirm that your client has produced its advertising materials (i.e. brochures, videos, television commercials, social media posts, etc.) that VWGoA published during the Relevant Time Period to direct market CPO vehicles to consumers, and if so, where we can find them in your production, and if not, when we can expect such materials.

RFP#110: Gross Profits from Financing CPO Cars. Your client refused to produce documents reflecting the gross profits its earns on financing CPO vehicles with its joint venture with VW Credit. This information is directly relevant to our cause of action for unjust enrichment and our claim for disgorgement. Please produce this information without further delay.

RFP#111: Increase in Profits from Selling CPO Cars. Your client refused to produce documents reflecting the average increase in sales price and gross profit earned by VWGoA and its dealers on the sale of CPO-designated used cars compared to otherwise similarly situated non-CPO-designated used cars. This information is directly relevant to our cause of action for unjust enrichment and our claim for disgorgement. Please produce this information without further delay.

RFP#112: Franchise Agreement with Dealers. Please confirm that your client has produced its franchise agreement with any dealer from whom one of the named Plaintiffs purchased their Class Vehicle, including all amendments thereto, for the Relevant Time Period, and if so, where we can find such agreements in your production, and if not, when we can expect such materials.

RFP#113: Average Gross Profit on CPO Sales. Your client refused to produce documents reflecting the average gross profits on each CPO vehicle sold, the number of CPO sales, during the Relevant Time Period. This information is directly relevant to our cause of action for unjust enrichment and our claim for disgorgement. Please produce this information without further delay.

RFP#115: Financial Statements. VWGoA's financial statements are clearly relevant to this action, given the claim for punitive damages. VWGoA attempted to make this same objection in the diesel litigation and forced me to bring a motion to compel, which was granted. Production of such financial information is routinely required in cases seeking punitive damages. Please produce this information without further delay.

Finally, we request that VWGOA comply with the ESI Order by providing a hit list for each search string set forth herein, as well as for the searches utilized to generate VWGoA's prior productions to date. In doing so, we ask your client to make clear the custodians whose documents

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were searched and whose documents are to be searched in connection with the requested searches outlined in this letter.

Thank you for your prompt attention to these matters.

Very truly yours,

/s/ Michael J. Melkersen

Michael J. Melkersen  
Co-Lead Counsel for Putative Class

cc: Counsel of Record